

ORIGINAL
FILE

RECEIVED

JUL 17 1992

Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Advanced Television Systems)
and Their Impact upon the)
Existing Television Broadcast)
Service)

MM Docket No. 87-268

COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

Gregory F. Chapados
Assistant Secretary for
Communications and Information

Phyllis E. Hartsock
Acting Chief Counsel

William F. Maher, Jr.,
Associate Administrator
Alfred Lee
Cheryl Glickfield
Cynthia Nila
Office of Policy Analysis
and Development

National Telecommunications
and Information Administration

U.S. Department of Commerce
Room 4713
14th Street and Constitution Ave., N.W.
Washington, D.C. 20230
(202) 377-1816

July 17, 1992

No. of Copies rec'd
List A B C D E

0710

TABLE OF CONTENTS

SUMMARY	i
I. INTRODUCTION	1
II. NTIA SUPPORTS ELIGIBILITY, ALLOTMENT AND ASSIGNMENT POLICIES THAT PERMIT RAPID ATV DEVELOPMENT	6
A. Although Competitive Bidding Could be an Efficient Assignment Mechanism, the Commission's Decision to Limit Initial Eligibility for ATV Radio Frequencies to Existing Broadcasters for Two Years is a Reasonable, Pragmatic Means to Implement Broadcast ATV	6
B. The Commission Should Permit A Second Round of Negotiations, After Channels Have Been Assigned, to Allow Parties to Negotiate Exchanges of Initial Channel Assignments	8
III. NTIA SUPPORTS THE ESTABLISHMENT OF AN EXPLICIT TIMETABLE, BUT EMPHASIZES THE NEED FOR PERIODIC COMMISSION REVIEW	10
A. The Commission Should Review the Propriety of the Effective Date of a Full Simulcasting Requirement Prior to Its Imposition	13
B. The Commission Should Review the Propriety of the Deadline for Surrendering Simulcast Spectrum Prior To Its Imposition	14
IV. BROADCASTERS SHOULD BE ALLOWED TO ELECT TO PROVIDE EITHER NTSC OR ATV SERVICE, AND RETURN THE UNUSED CHANNEL AT ANY TIME ON OR BEFORE A FINAL "ELECTION" DEADLINE	14
V. THE COMMISSION SHOULD ADOPT POLICIES THAT WILL RESULT IN EFFICIENT USE OF RECLAIMED SPECTRUM	18
VI. CONCLUSION	19

SUMMARY

NTIA supports the Commission's efforts to plan for ATV development and the broadcast industry's transition to an ATV service. But we caution that, even if the Commission is successful in establishing the regulatory conditions for supplying ATV, the success of this effort will ultimately depend upon consumer demand for the new service.

The Commission has decided to limit initial eligibility for ATV radio frequencies exclusively to existing broadcasters for a two-year period. This decision is premised on the Commission's characterization of ATV as "a major advance in television technology, not the start of a new service."

As a general matter, NTIA supports the use of market-based mechanisms, such as competitive bidding, for selecting new radio spectrum licensees. Such an approach could be an efficient way to perform ATV licensing and select channel assignments. However, in this instance, we acknowledge the Commission's decision to limit initial eligibility for ATV frequencies to existing broadcasters for two years as a reasonable and practical means to permit ATV development.

NTIA supports the Commission's proposal to allow applicants to negotiate among themselves for ATV channel assignments prior to the adoption of ATV allotment tables, including the

Commission's proposed procedure for assigning channels in situations where negotiations fail, but we recommend one important modification. We believe that the Commission should permit a second round of negotiations, after ATV channels have been assigned, to allow parties to negotiate exchanges of initial channel assignments for a reasonably limited period that does not unduly disrupt the ATV implementation timetable.

NTIA supports the Commission's decision to adopt a timetable providing specific deadlines for key events leading up to and including a broadcaster's surrender of one of its simulcast channels. However, because there are significant uncertainties with respect to ATV development, the Commission should obtain periodic information updates, and review ATV progress to adjust, if necessary, the timetable adopted, prior to key points, such as the imposition of the simulcasting requirement and the final deadline for returning one simulcast channel.

NTIA strongly supports the Commission's decision to require broadcasters to give up one of their two channel assignments by a specific deadline, but disagrees with the proposal to require that all broadcasters utilize the remaining channel only for ATV service. Rather, broadcasters should choose whether to offer NTSC or ATV service and surrender the corresponding unwanted channel at any time, up to and including an "election" deadline. NTIA acknowledges that the Commission should have a role in

facilitating the development of ATV, but cautions that consumers, not the Commission, will ultimately determine the extent of ATV's success in the marketplace. Our proposal offers broadcasters the ability to choose to offer the service (ATV or NTSC) most appropriate to marketplace needs.

In order to accommodate the goal of spectrum efficiency, NTIA recommends that the Commission initiate a rulemaking to determine: (1) how best to create large national or regional blocks of vacant radio spectrum; and (2) how to treat NTSC broadcasters that continue to occupy channels within blocks of spectrum that may have been largely vacated.

Finally, NTIA recommends that the Commission allow radio spectrum derived from reclaimed television channels to be reused for a variety of needs, as determined by the market. We advocate the use of private market transactions and competitive bidding to permit the reclaimed spectrum to be allocated and assigned to users who can derive the greatest value from that resource.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Advanced Television Systems)	MM Docket No. 87-268
and Their Impact upon the)	
Existing Television Broadcast)	
Service)	

**COMMENTS OF THE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION**

The National Telecommunications and Information Administration (NTIA), as the Executive branch agency principally responsible for the development and presentation of domestic and international telecommunications and information policy, respectfully files these comments in response to the Commission's Second Report and Order/Further Notice of Proposed Rulemaking in the above-captioned proceeding.^{1/}

I. INTRODUCTION

In this proceeding, the Commission has made key decisions and further proposals in an effort to facilitate the development of broadcast advanced television (ATV) under conditions of considerable uncertainty. In its Second Report and Order/Further Notice in this proceeding, the Commission has made several significant decisions, including: a) limiting initial eligibility for ATV frequencies to existing broadcasters for two years; b) giving those broadcasters two years to apply for a

1/ Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Second Report and Order/Further Notice of Proposed Rulemaking, 7 FCC Rcd 3340 (1992) (Second Report and Order/Further Notice).

"paired" ATV channel, and three years following channel assignment to construct their ATV facilities; c) requiring that broadcasters fully simulcast programming on their ATV and NTSC channels at the earliest appropriate point; and d) concluding that a firm date should be set for full conversion to ATV, at which time each paired broadcaster will be required to surrender one broadcast channel of its assigned pairs and cease broadcasting in NTSC.^{2/}

The Commission requests comment on various specific implementation proposals, including a proposal to allow negotiated channel assignments; a method to resolve conflicts where negotiations fail; a 15-year schedule for full conversion to ATV, with a 1998 review of the proposed conversion date; and a four-year timetable for imposing full simulcasting requirements after ATV stations have been constructed.

NTIA supports the Commission's efforts to plan for ATV development and the broadcast industry's transition to an ATV service. Clarifying the regulatory environment could lead to commitments from manufacturers and program producers to participate in ATV developments as well. But we caution that,

2/ Several of these decisions are the subjects of petitions for reconsideration. See, e.g., Petition for Partial Reconsideration of National Association of Broadcasters, MM Docket 87-268 (filed June 22, 1992) (NAB Petition); Petition for Partial Reconsideration of Association for Maximum Service Television, Inc., MM Docket 87-268 (filed June 22, 1992).

even if the Commission is successful in establishing the conditions for supplying ATV, the success of this effort will ultimately depend upon consumer demand for the service and on the desire and ability of potential ATV broadcasters to meet that demand.

Among the decisions reached in the Second Report and Order/Further Notice, the Commission has decided to limit initial eligibility for ATV frequencies exclusively to existing broadcasters (excluding low-power television broadcasters) for a two-year period. As a general matter, NTIA supports the use of market-based mechanisms, such as competitive bidding, for selecting new radio spectrum licensees. Such an approach, if applied to ATV licensing and channel assignments, could be an efficient way to make channel assignments and to select licensees, while satisfying public interest standards. However, in this instance, we understand the Commission's decision to limit initial eligibility for ATV frequencies to existing broadcasters for two years as a reasonable, pragmatic mechanism to speed ATV development.

NTIA supports the Commission's proposal to allow applicants to negotiate among themselves for ATV channel assignments prior to the adoption of ATV allotment tables, including the Commission's proposed procedure for assigning channels in situations where negotiations fail, but we recommend one important modification. We believe that the Commission should

permit a second round of negotiations, after ATV channels have been assigned, to allow parties to negotiate exchanges of initial channel assignments for a reasonably limited period that does not unduly disrupt the ATV implementation timetable. Such further negotiations would offer a valuable opportunity for parties to improve upon their initial assignments.

NTIA supports the Commission's decision to adopt an explicit timetable providing clear deadlines for key events leading up to and including a broadcaster's surrender of one of its simulcast channels. However, because there are significant uncertainties with respect to ATV development, the Commission should obtain periodic information updates and review ATV progress prior to certain key points in the schedule, such as the imposition of a simulcasting requirement and the deadline for returning a simulcast channel. With periodic information updates and review, the Commission would have a sounder basis for adjusting the timetable, as deemed necessary.

NTIA strongly supports the Commission's decision to require broadcasters to give up one of their two channel assignments by a specific deadline, but disagrees with the proposal to require that all broadcasters utilize the remaining channel only for ATV service. Rather, broadcasters should be given a choice of offering NTSC or ATV service and surrendering the corresponding unwanted channel, in a particular market, at any time, up to and including an "election" deadline. Following the Commission's

reasoning, but subject to the review recommended above, that deadline could be set at 15 years after the later of either selection of an ATV system or the date that a Table of Allotments is effective. NTIA acknowledges that the Commission should have a role in facilitating the development of ATV but cautions that consumers, not the Commission, will ultimately determine the extent of ATV's success in the marketplace. Our proposal offers broadcasters the ability to choose to offer the format (ATV or NTSC) most appropriate to marketplace needs.

In order to accommodate the goal of spectrum efficiency, NTIA recommends that the Commission initiate, at the earliest possible time, a rulemaking to determine how best to create large national or regional blocks of vacant radio spectrum from that returned to the Commission by its final deadline. That rulemaking should also address the treatment of NTSC broadcasters that continue to occupy channels within blocks of spectrum that may have been largely vacated.

Finally, NTIA recommends that the Commission allow radio spectrum derived from reclaimed television channels to be used for a variety of needs, as technically feasible and as determined by the market. We advocate the use of private market transactions and competitive bidding to permit the reclaimed spectrum to be used by those who can derive the greatest value from that resource.

II. NTIA SUPPORTS ELIGIBILITY, ALLOTMENT AND ASSIGNMENT POLICIES THAT PERMIT RAPID ATV DEVELOPMENT

- A. Although Competitive Bidding Could be an Efficient Assignment Mechanism, the Commission's Decision to Limit Initial Eligibility for ATV Radio Frequencies to Existing Broadcasters for Two Years is a Reasonable, Pragmatic Means to Implement Broadcast ATV

In the Second Report and Order/Further Notice, the Commission decided to limit initial eligibility for ATV radio frequencies to existing broadcasters (excluding low-power television broadcasters) for a two-year period.^{3/} Once initial ATV allotments and assignments are made, any qualified applicant may apply for ATV frequencies for which existing broadcasters failed to apply or construct ATV facilities within the required time. Moreover, any qualified applicant may expand the existing table of ATV allotments through the normal rulemaking process and apply for those additional frequencies.^{4/}

As a general matter, we believe there is substantial merit in adopting an assignment process that relies on a market-based approach for distributing new radio spectrum licenses. Such a process could be appropriate for ATV licensing and channel

3/ Second Report and Order/Further Notice, 7 FCC Rcd at 3343, ¶ 7.

4/ Id. at 3344, ¶ 14. Existing broadcasters who do not apply for or construct ATV facilities during the initial implementation phase may apply for available ATV channels during this subsequent period, but they will be given no special priority over other competing applicants.

assignments.^{5/} A competitive bidding procedure could give broadcasters, among others, an opportunity to develop ATV and could also be an efficient way for the Commission to select licensees and make channel assignments, while satisfying public interest standards.^{6/}

While we seek to promote economically efficient approaches to licensing and assignment generally, NTIA recognizes that the Commission's decision to limit initial eligibility to existing broadcasters was based on an analysis that characterizes ATV as "a major advance in television technology, not the start of a new and separate video service."^{7/} Under this analysis, the Commission's eligibility criteria represent a reasonable,

^{5/} While comparative hearings, a traditional method of assigning broadcast licenses, also provide parties other than incumbent broadcasters with an opportunity to obtain spectrum for ATV services, their use could result in unnecessary delays, administrative burdens, and arbitrary results, making them less desirable than other alternatives. See National Telecommunications and Information Administration, U.S. Dep't of Commerce, Spec. Pub. No. 91-23, U.S. Spectrum Management Policy: Agenda for the Future 38-39 (Feb. 1991).

^{6/} The Administration has proposed the use of competitive bidding to assign new licenses as part of the Economic Growth Tax Act of 1992, which would give the Commission explicit statutory authority to use that approach for certain services (S. 2217; H.R. 4150), See also Testimony of Secretary of Commerce, Robert Mosbacher Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science and Transportation, 102d Cong., 1st Sess. (Oct. 17, 1991).

^{7/} Second Report and Order/Further Notice, 7 FCC Rcd at 3342, ¶ 5.

practical means for increasing the likelihood of achieving the Commission's goal of permitting rapid ATV development.^{8/}

B. The Commission Should Permit A Second Round of Negotiations, After Channels Have Been Assigned, to Allow Parties to Negotiate Exchanges of Initial Channel Assignments

The Commission proposes to allow broadcasters, after the planned ATV Table of Allotments has been issued,^{9/} to negotiate with each other for a fixed period of time, and to submit plans for pairing NTSC and ATV channels either nationwide or market-by-market, based on these negotiations.^{10/} After the negotiation period has ended, if there are markets remaining where broadcasters are unable to agree on a pairing plan, the Commission proposes to assign ATV channels in those markets on a first-come, first-served basis.^{11/} In the case of simultaneously filed applications, the Commission proposes to apply a "random ranking" procedure in which the top-ranked applicant would be granted its first choice, and the next-ranked applicant would be

8/ The Commission has already concluded that, under its approach, Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945), does not require the Commission to give comparative consideration initially to all interested applicants for ATV licenses. Id. at 3342, ¶ 6.

9/ Methods for Allocating Channels for ATV Service and Draft ATV Table of Allotments Proposed, MM Docket No. 87-268, Report No. DC-2177 (released July 16, 1992).

10/ Id. at 3349, ¶ 35.

11/ Id.

given its highest choice that would not conflict with the first-ranked applicant's choice, and so on.^{12/}

NTIA supports the Commission's proposal to allow applicants to negotiate among themselves for ATV channel assignments prior to the adoption of ATV allotment tables. Unlike a purely random assignment procedure, a negotiation process will give applicants the opportunity to negotiate for the ATV channels they value most highly. We also support the Commission's proposed first-come/first-served procedure for assigning channels in situations where negotiations fail, with one important modification that could further improve this proposed assignment procedure.

We believe that the Commission should permit a second round of negotiations, after ATV channels have been assigned, to allow parties to negotiate exchanges of initial channel assignments for a reasonably limited period that does not unduly disrupt the timetable for ATV implementation. Such negotiations will offer parties the opportunity to improve upon their initial assignments, possibly increasing the number of applicants matched to the channels they desire to use.

^{12/} Id.

III. NTIA SUPPORTS THE ESTABLISHMENT OF AN EXPLICIT TIMETABLE,
BUT EMPHASIZES THE NEED FOR PERIODIC COMMISSION REVIEW

The Commission's scenario for ATV implementation contemplates a timetable to commit broadcasters to make a transition from an NTSC to an ATV format. Thus, the Commission has adopted a two-year window for existing broadcasters to apply initially for a paired ATV channel, which begins to run on the date that an ATV allotment table becomes effective or an ATV system is selected, whichever is later.^{13/} The Commission has established a three-year deadline for constructing an ATV facility once the frequency has been assigned.^{14/} In this phase of the proceeding, the Commission proposes that broadcasters be required to simulcast 100 percent of their programming on their NTSC and ATV channels four years after the assignment/construction period has elapsed.^{15/} The Commission tentatively sets a 15-year period for full conversion to ATV and surrender of NTSC licenses, commencing on the date an ATV allotment table is effective or an ATV system is selected, whichever is later.^{16/} However, the Commission proposes to review that 15-year deadline in 1998.^{17/}

^{13/} Id. at 3346, 3347, ¶¶ 22, 25.

^{14/} Id. at 3346, ¶ 23.

^{15/} Id. at 3356, ¶ 60.

^{16/} Id. at 3353, ¶ 53. As NTIA proposes in these comments, rather than require all broadcasters to convert to an ATV format at a conversion deadline, broadcasters should be able to choose whether to broadcast in the ATV or NTSC format at an election deadline. See infra Part IV.

^{17/} Id. at 3354, ¶ 55.

NTIA supports the Commission's decision to adopt a specific timetable providing clear deadlines for key events leading up to and including a broadcaster's surrender of one of its simulcast channels. As the Commission notes, such deadlines are needed to encourage ATV development, so that this advance in the broadcasting service can be made available to the American public quickly.^{18/} An established time frame for surrender of simulcast channels will also expedite the freeing of spectrum of significant value to other users.

More importantly, the Commission's decision to limit initial eligibility for ATV licenses to existing broadcasters may not be sufficient to encourage broadcasters to take the necessary transitional steps toward an ATV service. Existing broadcasters probably will be awarded most, if not all, of the available ATV channels. As a result, they will not face competition from new entrants that would have a strong economic interest in speeding ATV development, and would therefore create pressure for broadcasters to keep pace. A timetable for ATV development would substitute for the impetus that market forces would create to encourage broadcasters to meet consumers' needs in this regard.^{19/}

^{18/} Id. at 3346, ¶ 21. It also reinforces NTIA's proposed requirement that broadcasters must choose one format or the other. See infra Part IV.

^{19/} Existing broadcasters may, in fact, have additional incentives to deploy ATV expeditiously because competing distribution media, such as cable and direct broadcast satellite services, may also begin to offer ATV service.

Even acknowledging the need for a clear deployment timetable, the Commission has an ongoing responsibility to review that timetable in light of changing economic and technical circumstances. The Commission recognizes this responsibility when it proposes a one-time review of the 15-year conversion deadline in 1998.^{20/} However, given the many uncertainties surrounding ATV development, a single review may not serve the public interest. Instead, the Commission should obtain periodic information updates on ATV progress, perhaps from the Advisory Committee on Advanced Television Service,^{21/} and consider making essential changes to its implementation schedule as such information warrants. Moreover, for the reasons set forth below, NTIA recommends that the Commission review the propriety of its deadlines prior to two key points -- the simulcasting deadline and the final deadline when a broadcaster surrenders a simulcast channel.

Moreover, inaction by existing broadcasters may result in ATV deployment by new entrants. Under the Commission's plan, failure to meet the application or construction deadlines will increase opportunities for entry by new competitors. Thus, the two-year limit on exclusive eligibility of existing broadcasters and the open entry policy subsequent to that two-year period are important components of the Commission's proposed timetable.

^{20/} Second Report and Order/Further Notice, 7 FCC Rcd at 3354, ¶ 55.

^{21/} In 1987 the Commission created the Advisory Committee on Advanced Television Service to advise it on technical, economic, legal and regulatory issues arising from the implementation of ATV service. See Formation of Advisory Committee on Advanced Television Service and Announcement of First Meeting, 52 Fed. Reg. 38,523 (1987).

A. The Commission Should Review the Propriety of the Effective Date of a Full Simulcasting Requirement Prior to Its Imposition

NTIA agrees that the Commission should impose a full (or "100 percent") simulcasting requirement at the earliest appropriate date, as proposed by the Commission. However, NTIA believes that the Commission should conduct a review of the appropriateness of the proposed 100 percent simulcasting deadline prior to its imposition. ATV's viability depends, in part, on consumers' ability to differentiate ATV from the long-standing NTSC format. Consequently, broadcasters and program producers should be afforded sufficient time and flexibility to establish the ATV format in the marketplace.^{22/} NTIA believes that the Commission should survey and ascertain ATV progress (e.g., receiver penetration, percentage of programming produced in the ATV format, cost of receivers, production and transmission equipment, and audience shares and ratings) before permitting the full simulcasting requirement to take effect.

^{22/} The Commission also presents an alternative under which it would "phase in" a full simulcasting requirement in two stages. Second Report and Order/Further Notice, 7 FCC Rcd at 3342, ¶ 3. NTIA believes that the two-stage alternative is not as desirable as the full simulcasting proposal because it would offer broadcasters less flexibility in program development during the critical introductory period of the ATV format.

B. The Commission Should Review the Propriety of the Deadline for Surrendering Simulcast Spectrum Prior To Its Imposition

While it is desirable to establish a final deadline by which broadcasters must surrender one of their simulcast channels, the Commission may be unable to judge the suitability of the proposed 15-year deadline by 1998. At that time, broadcasters may not have completed construction of their ATV facilities, let alone begun ATV transmissions. Further, the actual degree of commitment to the new technology by program producers, equipment manufacturers, other distribution media, and consumers may not be clear. As a result, NTIA suggests that the Commission require additional information in later years from which to judge whether the 15-year date is reasonable. We also recommend that the Commission review the final deadline shortly before its imposition. By evaluating information concerning ATV programming volume and receiver sales at that time, the Commission can rule on the appropriateness of the 15-year requirement in light of market conditions.

IV. BROADCASTERS SHOULD BE ALLOWED TO ELECT TO PROVIDE EITHER NTSC OR ATV SERVICE, AND RETURN THE UNUSED CHANNEL AT ANY TIME ON OR BEFORE A FINAL "ELECTION" DEADLINE

The Commission states that broadcasters with paired ATV/NTSC channels will be required to convert to ATV when it "becomes the prevalent medium."^{23/} As noted above, the Commission proposes that such broadcasters convert to ATV 15 years from the date an

^{23/} Id. at 3353, ¶ 50.

ATV system is adopted or an ATV Table of Allotments is effective, whichever is later.^{24/} By this final deadline, which the Commission calls the "conversion" date, broadcasters would be required to surrender one of their two broadcast channels and cease broadcasting in NTSC.^{25/} The Commission reasons that ATV growth would be inhibited if the public were indefinitely allowed to choose between ATV and NTSC programming.^{26/}

Under the Commission's proposal, broadcasters do not have the option of surrendering their ATV channel during the intervening 15-year period and continuing to broadcast in the NTSC format. The Commission states that if a broadcaster's ATV or NTSC license is revoked or not renewed, the Commission will automatically revoke the other license.^{27/}

In NTIA's view, the Commission should take an alternative approach. Although the Commission should have a role in facilitating the development of ATV, consumers, not the

^{24/} Id. at 3353, ¶ 53.

^{25/} Id. at 3353, ¶ 50. The Commission does not specifically state whether other NTSC broadcasters (broadcasters that had not initially elected to pair with an ATV channel, or NTSC broadcasters that had elected to pair, but were unable to do so) will be required to convert to an ATV format. We recommend that the Commission clarify its intent in this regard.

^{26/} Id.

^{27/} Id. at 3344, ¶ 12. The Commission states, however, that it will consider permitting the voluntary surrender of an NTSC channel by a broadcaster with paired NTSC/ATV channels on a case-by-case basis. Id.

Commission, should ultimately determine the extent of ATV's success in the marketplace. Consequently, the Commission should adopt an ATV development scheme that maximizes consumer choice in making viewing decisions and equipment purchases. Even if ATV gains widespread acceptance, as NTIA anticipates, demand for NTSC service may continue for a small, but significant, portion of the population.^{28/} Any such lingering demand for NTSC programming need not forestall ATV deployment. Contrary to the Commission's assumption, vigorous ATV deployment does not depend on every consumer and every broadcaster in every community converting to the new format. Accordingly, the Commission should not take actions that even indirectly compel all consumers to make investments in ATV receivers if such investments are not in their interest. Nor should it unilaterally impose the associated financial burdens of investing in ATV transmitters and studio equipment on existing broadcasters.

For these reasons, the Commission should not require all paired broadcasters to convert to ATV, whether in 15 years or at any other time. Rather, the Commission should permit broadcasters to elect to provide either NTSC or ATV service at any time up to and including a final "election" deadline, which

^{28/} The Commission cites evidence to support the finding that in a 15-year period only half of all NTSC television sets will go out of use. Id. at 3354, ¶ 53, n.153 [citing EIA (Electronic Industries Association) Color Television Replacement Cycle Study at iii (Apr. 1985); Comments of North American Philips Corp. at 10-12 (filed Dec. 20, 1991) (average life of a television receiver is 15 years)].

could be set at the 15-year point proposed by the Commission for its conversion deadline. When each broadcaster chooses between its NTSC or ATV channel, in a particular market, it should be required to surrender the unwanted channel.^{29/}

In any event, the Commission must make clear that a paired broadcaster must elect either the NTSC or ATV service in a particular market and surrender the unwanted channel by the election deadline. Under no circumstances should a broadcaster be free to retain both the NTSC and ATV licenses after the election deadline. The Commission should remain committed to recovering paired spectrum and then permitting the American public to use that spectrum efficiently.

^{29/} NTIA recognizes that, under its proposal, a viable market for NTSC service may continue to exist in addition to ATV service. Some paired broadcasters may elect to broadcast only in a NTSC format. Other classes of NTSC broadcasters may exist, as well, including broadcasters that initially elected not to pair with an ATV channel, and broadcasters that sought to pair with an ATV channel, but were unable to do so. NTIA believes that all classes of NTSC broadcasters should be allowed to continue to broadcast in NTSC. If the Commission determines that for the sake of spectrum efficiency, some broadcasters will have to modify their licenses, then all classes of NTSC broadcasters should be accorded the same treatment. See infra Section V for a discussion of NTIA's proposals for the disposition of reclaimed NTSC radio spectrum.

V. THE COMMISSION SHOULD ADOPT POLICIES THAT WILL RESULT IN
EFFICIENT USE OF RECLAIMED SPECTRUM

Under the Commission's proposals, many existing broadcasters will be making major changes in the channels on which they provide service and the Commission will be reclaiming a substantial amount of spectrum from paired broadcasters. To the extent possible, the spectrum reclaimed by the Commission should be used to form large blocks of vacant spectrum in as many areas as possible. This result could increase spectrum efficiency and the possible uses of reclaimed spectrum, including more national services and services that require large blocks of radio spectrum. In order to accommodate this goal, NTIA recommends that the Commission initiate a rulemaking to determine how best to create large national or regional blocks of vacant radio spectrum and to examine the treatment of NTSC broadcasters that continue to occupy channels within blocks of spectrum that may have been largely vacated.

With respect to vacated frequencies, NTIA recommends that the Commission promote flexible use of the reclaimed spectrum, under which a license awardee could ascertain the "best use" for the spectrum based on marketplace factors. Such use of vacated frequencies should not be limited to broadcasting services.^{30/} Specifically, NTIA believes the Commission would best serve the

^{30/} Although the Commission could permit the vacated frequencies to be used by prospective new entrants into ATV broadcasting, it should evaluate other potential uses as well.

interests of consumers by using a competitive bidding process to determine licensees of reclaimed radio spectrum, while permitting private negotiations among licensees in different radio services as another means of promoting flexible use.^{31/}

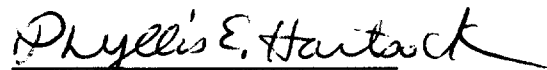
VI. CONCLUSION

NTIA supports the Commission's efforts to plan for ATV development and the industry's transition to a broadcast ATV service. Accordingly, NTIA respectfully requests that the Commission adopt the recommendations contained in its comments in this proceeding.

Respectfully submitted,

Gregory F. Chapados
Assistant Secretary for
Communications and Information

William F. Maher, Jr.,
Associate Administrator
Alfred Lee
Cheryl Glickfield
Cynthia Nila
Office of Policy Analysis
and Development


Phyllis E. Hartsock
Acting Chief Counsel

National Telecommunications
and Information Administration

U.S. Department of Commerce
Room 4713
14th Street and Constitution Ave., N.W.
Washington, D.C. 20230
(202) 377-1816

July 17, 1992

^{31/} See Comments of National Telecommunications and Information Administration in ET Docket 92-9, at 9 (filed June 8, 1992).

CERTIFICATE OF SERVICE

I, Cheryl A. Kinsey, do hereby certify that I have this 17th day of July, 1992, mailed by first class United States mail, postage prepaid, copies of the foregoing Reply Comments to the following:

Alfred C. Sikes
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

Sherrie P. Marshall
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

Andrew C. Barrett
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Ervin S. Duggan
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Francine J. Berry
AT&T
295 North Maple Avenue
Room 3244J1
Basking Ridge, NJ 07920

Sam Antar
Capital Cities/ABC, Inc.
77 West 66th Street
New York, NY 10023